

## **MINUTES OF HARRISONBURG PLANNING COMMISSION**

**April 8, 2009**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, April 8, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, Alan Finks, Bill Jones, and J.M. Snell.

Members absent: None

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with all seven members in attendance. He then asked for review and approval of the minutes from the March 11, 2009 Planning Commission meeting.

Mr. Baugh said he has one correction for the minutes; on page 21, within the eighth paragraph, the second "not" should be removed.

Mr. Chenault moved to approve the minutes from the March 11, 2009 meeting with the correction noted by Mr. Baugh.

Mr. Finks seconded the motion.

All voted in favor of approving the minutes. (7-0)

### **New Business**

#### ***Preliminary Plat – Variance Requests Lots 49 & 50 Norwood Street (Kettelkamp)***

Chairman Burden read the first item of business and asked for staff to review.

Mr. Chenault recused himself from the Planning Commission and left the room for this request.

Mrs. Banks said the Comprehensive Plan designates this area as Medium-Density Residential. This designation states that these areas are near major thoroughfares or commercial areas. They contain a variety of housing types such as single-family, duplex, and two or three story apartments and densities can range from 1 to 15 units per acre.

The following land uses are located on and adjacent to the property:

Site: Vacant land, zoned R-3

North: Across Norwood Street, apartment dwelling, zoned R-3

East: Single-family dwelling, zoned R-3

South: Vacant land, zoned B-2

West: Single-family dwelling, zoned R-3

This is a request to preliminarily subdivide two parcels into three townhouse lots. The parcels are located along the southern side of Norwood Street, approximately 200 feet from the intersection of Reservoir Street and Norwood Street. Generally, this type of subdivision would not be reviewed by

Planning Commission as a preliminary plat, but because the applicant is requesting multiple variances from the subdivision regulations, it goes beyond the scope of a minor subdivision. Should this request be approved the applicant intends to construct three townhouse units on these infill lots.

The four variances requested with this preliminary plat are associated with right-of-way dedication and required street improvements. Section 10-2-45 of the subdivision regulations requires that when subdividing property, the applicant must dedicate all land designated for future street widening, to public use. Section 10-2-41 provides design standards for streets and alleys and specifically, sub-section (i) (3) denotes the width for minor streets, such as Norwood Street, which should be 50 feet of right-of-way. Currently, this section of Norwood Street has a 30-foot right-of-way, and in this particular situation the applicant must dedicate 10 feet along the frontage. Section 10-2-66 states street improvements shall be provided with each new subdivision in accordance with standards and specifications of the City. These improvements could include pavement, curb, gutter, sidewalk, storm sewer, and others, which shall be installed by the subdivider, at their expense, as per Section 10-2-67 of the subdivision regulations.

The applicant is requesting to deviate from each of the above sections citing that future street widening is improbable, as these would be the only lots that dedicated right-of-way, additional right-of-way acquisition would require the demolition of existing dwellings, and that the required street improvements would not align with the existing facilities along Norwood Street. Staff is only supportive of two of the variances the applicant is requesting, Section 10-2-66 and 10-2-67. The City would like the improvements to Norwood Street to be completed in a more comprehensive approach; therefore we support the applicant's request to not build the street improvements. Staff believes if the improvements were constructed only along this frontage, confusion for drivers could arise.

As previously stated, the applicant desires to create three townhouse lots at this location. Townhouses are designed to permit individual and separate ownership of each lot and the R-3 zoning regulations require each separate townhouse lot to have at least 2,000 square feet of lot area, 18 feet of lot width, and 112 feet of lot depth. In this case, if the applicant dedicates the 10 feet of right-of-way, he would not have enough lot depth to meet the requirement of 112 feet; therefore he cannot construct townhouses. The dedication of right-of-way would also reduce the lot area so that there is not enough available area left to meet the requirement for the construction of a three unit apartment building at this site. There are other options for construction, such as not subdividing and constructing two single-family dwellings on the existing two lots, or constructing a duplex on the site regardless of whether it is resubdivided. The applicant has stated that such dwellings are not cost effective for this location and three dwelling units would be more likely to sell.

Two parcels along Norwood Street have gone through the subdivision process in recent years. The first was a City owned parcel that, prior to selling the lot, the City subdivided to acquire the necessary right-of-way and made the appropriate street improvements. The other occurred in 2005 when a minor subdivision was approved for a parcel along the northern side of Norwood Street. Ten feet of right-of-way was to be dedicated; however, the subdivision was never recorded by the applicant and the right-of-way was never acquired. As just described, ten feet of right-of-way was requested with both of these subdivisions, which is consistent with what is required with this preliminary plat. The applicant questioned whether the City would allow a 10-foot easement in place of the right-of-way dedication for future street improvements. Public Works staff has determined that easements would not be acceptable in this situation.

Staff does not feel a variance to Sections 10-2-41 (i) (3) and 10-2-45 is warranted in this case. The dedication of right-of-way is consistent with other subdivision requests in this area and throughout the City. Staff does not want to set a precedent of deviating from this requirement or allowing easements in place of right-of-way simply to maintain desired density. Staff recommends in favor of the variances from Sections 10-2-66 & 67. Nevertheless, staff is not in support of the preliminary plat with variance requests to Sections 10-2-41 (i) (3) and 10-2-45 to not dedicate right-of-way.

Chairman Burden asked if there were any questions for staff. Hearing none, he stated this was not a public hearing; however, if the applicant or the applicant's representative would like to speak they may.

Melisa Michelsen said she is an attorney with Litten and Sipe and is here representing Scott Kettelkamp, who operates Persist, LLC, and is the applicant in this matter. Scott Kettelkamp is out of town, but he wanted me to express to you two things. First his apology for not being able to be here tonight, this is very important to him; also to express his commitment to the City in building affordable homes for residents within the City. Scott is a young, family guy, who understands the importance of having affordable homes for the City's residents and that is his goal with these types of developments. He could put rentals on this property, but he feels the need is much more in having homes that citizens can purchase.

As staff has indicated, four ordinances come into play with this approval. I would like to direct the Commission's attention to ordinance section 10-2-2, variances in general, which allows for deviations in these type of situations when there creates a hardship if you strictly adhere to the requirements of the chapter and moreover, if these requests do not affect a nullification of the goal, the intent, and the purpose of the chapter as a whole. I submit that this is an appropriate type of situation, based on the location and the other homes in the area. This is the type of situation where the ordinance allows for that flexibility in providing for the community's goals as well as the developers goals. If you direct your attention to section 10-2-45, I submit that this ordinance is not 100% applicable to this type of subdivision; it is very small, there are no new streets, there is no widening of the street to date, except for the City's dedication.

I did bring some photographs that show the area is made up of smaller homes and apartment buildings, close to the street. We submit that widening of Norwood Street is not really a feasible consideration when you look at the other properties along Norwood Street. In fact, the house right next door is almost on top of the street now; ten more feet and you would be at the front door of that house. Unless there is a lot of demolition of existing structures on Norwood Street, widening or allowing for the right-of-way is not really a feasible or practical situation, nor may it be a desirable thing for the City. It is a small street and I submit that the proposal by Mr. Kettelkamp would not burden the street to any greater degree. He is trying to balance the density issues involved with the right-of-way concerns, and he feels that right-of-way concerns are not as strong as some of the density issues.

We respectfully disagree with the staff's concerns of not wanting to set a precedent. We understand that you want to treat everyone similarly, but this is why there are variances. I submit that this is the exact type of circumstance, when you have mostly non-conforming structures near the project; it is not going to be likely to widen the street. The one other project that was required to have the ten feet of right-of-way never came to fruition; that may be an indicator that it is not feasible on this street to require the right-of-way with the size of lots that adjoin that street.

Mr. Kettelkamp respectfully requests a variation on the right-of-way and not to dedicate the ten feet as required by 10-2-41 (i) (3). He feels it is an undue hardship; it is unrealistic given the street and the structures along the street. There had been some questions as to whether he could receive a Board of Zoning Appeals (BZA) variance on the setback and he had some discussions with the BZA; but my understanding from Mr. Kettelkamp is the BZA did not feel that their statute of undue hardship had any flexibility to allow him to receive a variance. He created the hardship, so there is no way he could qualify for undue hardship. Whereas we feel the way the ordinance is written in 10-2-2 and 10-2-45 there is that flexibility for having a variance. He has a depth requirement of 112 feet and on the one side of the property there is only 113 feet, he has no spare room to even offer for a lesser right-of-way.

Again, we submit that this is the type of situation, with this road, with the other properties on this road; this is the exact type of situation where a variance is allowed. This type of housing is needed in this community and improvements to this area are needed. Allowing these types of variances do not run afoul of the intent or the purpose of the ordinances and we respectfully request you approve the plat as submitted.

Mr. Snell asked do you know what the front setback is on lot number one. The building is positioned some dimension back from the minimum required setback of thirty-feet, but there is no dimension to say what that distance is.

Mrs. Banks said the townhouse appears to be 38 to 40 feet back on the plat; but this is not a question of the setback, it is a lot depth issue.

Mr. Snell said the subdivision ordinance from where this variance is requested, section 10-2-45, also has within it this minimum lot depth for townhomes. Is that true?

Mrs. Banks replied that the minimum lot depth requirement was part of the zoning ordinance, R-3 regulations.

Mr. Snell asked what the minimum lot depth requirement is.

Mrs. Banks said 112 feet, and it is an average of 112 feet. Unfortunately, because the one side is only 113 feet you cannot get an average of 112 for all the lots, even if you reduced the amount of right-of-way to be dedicated.

Mr. Snell said this would work for the setback requirement; you could position the townhouses units differently to meet the setbacks.

Mrs. Banks said yes, you could shift townhouse units back and meet setback requirements. This is not a question of setbacks; setbacks can be met as well as lot area.

Mr. Snell said so it is just the one dimension, the length of the lot.

Mrs. Banks replied yes.

Mr. Da'Mes said would this not be an issue that the applicant could take back to the BZA.

Mr. Fletcher said the BZA can only take under consideration specific hardships and this property is still usable for dwellings even after dedicating the right-of-way.

Mr. Burden said the applicant and the applicant's representative have both said that the BZA or staff have made it clear regarding their view that the hardship standard would not be met. But that is without an official review by the BZA.

Ms. Michelsen replied correct. I think that based on conversations with both staff and BZA. Mr. Kettelkamp got the impression that the BZA would not give him any flexibility. This was not something that they could consider as an undue hardship, because it would be self created and there are other uses that he could use the property for.

Mr. Da'Mes asked if the BZA would be able to accommodate the needed ten feet.

Mrs. Banks said the BZA has a much defined window of what they can look at as a hardship for granting variances; it is very specific such as size and shape of lot, topographic, or other extraordinary circumstance that would prohibit the use of the property. In this particular case, there is not a hardship; the applicant would be freely dedicating the ten feet of right-of-way and he still has the option to construct single-family dwellings or a duplex. The applicant is not being denied the right to build something on the property.

Mr. Snell asked if the applicant was constructing a duplex what would be the minimum lot depth.

Mrs. Banks said 100 feet.

Mr. Snell asked if he were building apartments what would it be.

Mrs. Banks said 100 feet.

Mr. Fletcher said if he were to construct apartment units his lot area would bump up. The requirement is 2,000 square feet per unit for townhomes and 3,000 square feet per unit for multi-family.

Mr. Snell asked how much lot area does the applicant currently have.

Mrs. Banks said 9,443 square feet.

Mr. Snell said the applicant could build three apartments.

Mr. Fletcher said he would have to remove a property line, which is a subdivision and requires the dedication of right-of-way; when he dedicates the right-of-way that takes away the square footage needed for the multi-family lot area.

Mr. Snell said with this property the shape comes into play when trying to construct townhouses and lot size is the issue when trying to construct apartments.

Mr. Fletcher said yes, but currently he could construct two single-family dwellings or a duplex by right, without having to subdivide and dedicate right-of-way.

Mr. Snell said the fact that the applicant is subdividing is the real issue and therefore the right-of-way dedication kicks in.

Chairman Burden asked if there were any further questions for Ms. Michelsen. Hearing none, he asked if there was further discussion.

Mr. Snell asked staff if they had any idea as to why 112 feet was the minimum lot depth on townhomes.

Mrs. Turner said it was that way in the 1987 ordinance and I do not know before that when it came into being.

Mr. Snell said 112 feet is a rather odd number. 110 feet seems a bit more logical. We cannot do anything about the required 112 feet, so the real issue is can we live with a variance for the 10 feet

of right-of-way required by the subdivision ordinance. That is the question we ultimately must decide.

Mr. Fletcher responded yes. This is a precedent we do not want to set; this happens all the time in many, many subdivisions all year long. This plat actually went through the minor subdivision process because it did not meet any of the requirements for requiring a preliminary plat. When the applicant was notified of the right-of-way dedication is what triggered all of this.

Mr. Baugh said we had a client who recently went through something fairly similar. For them it was duplexes, by the time they dedicated the right-of-way they were just a few feet short of the area needed to get the extra lot. Where ever you draw the line it is going to happen sooner or later.

Mr. Finks said that is where we are at right now and what happens when you start stretching the rules, you create a slippery slope effect.

Mr. Burden said if in some future time the City decides that they really have to have a 50-foot right-of-way all the way down Norwood Street, they would not wait for these subdivision applications to come they would just condemn on each side of the street.

Mrs. Banks said they would purchase right-of-way.

Mr. Snell said then you would have houses that do not meet setback requirements.

Mr. Fletcher said generally, when the City is purchasing right-of-way for new streets or expansions and improvements of streets, they will go through the BZA for variances on the existing structures.

Mr. Snell said we could address this problem the other way. If we cannot logically justify 112 feet, we could amend our R-3 zoning for townhomes to 100 feet, just like the other categories.

Mrs. Banks said it would not give you your required 2,000 square feet of lot area, so you would have to make it up somewhere, or amend that requirement too.

Mrs. Turner responded not necessarily, R-1 requires 10,000 square feet of lot area, but the lot depth and width requirements are 80 feet and 100 feet, so obviously one of those has to be larger than the minimum. The only other thing I can think of for the 112-foot requirement is that townhouses are a denser form of development. Many times they are built in closer proximity to single-family neighborhoods and the additional depth gives them a little more open area around them or separation from a neighborhood. That is the only reason I can think of for the 112-foot depth, but I do not know if it is the reason.

Mrs. Banks said in most cases with townhomes the added depth is used for the parking.

Mr. Da'Mes said it seems that the right-of-way would be a necessity for the future integrity of that street. Currently, that street does not have curb, it is not lined for pedestrian or traffic flow; but by planning for the right-of-way in the future that can be foreseen for Norwood Street.

Mr. Baugh said I do not know when the City would need it, but if we do not take it now, I do not know when.

Mr. Snell said the difference is whether the City has to pay for the ten feet.

Mr. Da'Mes responded that before us is the opportunity to insure that we acquire the right-of-way without having to pay for it.

Mr. Snell asked why does granting the easement not work.

Mr. Fletcher said in particular situations it does. I can think of one other situation over on Ridgeville Lane where Public Works thought an easement was acceptable. Of course the situations over there are different, the pavement width is 40 feet wide and less right-of-way was being required.

Mr. Snell asked if the applicant offered an easement in this particular case.

Mr. Fletcher replied yes. We checked with Public Works and as mentioned in the staff report, they specifically said in this situation an easement would not be sufficient.

Mr. Snell asked if Public Works gave a reason for their response.

Mr. Fletcher said no. My only guess is because of the pavement width and the amount of traffic that travels through Norwood Street.

Mr. Snell said are you saying that the easement that was offered was too small.

Mrs. Banks said no, Public Works just said it was not acceptable at this location under this scenario.

Mr. Burden asked if anyone knows what the traffic totals are on Norwood.

Mr. Fletcher said we do not know the traffic totals in this area.

Mr. Snell said Norwood Street does not really go anywhere, it just loops over to Hawkins Street and out to Market Street.

Mrs. Turner asked if staff knew how many bedrooms were proposed for the townhouse units; therefore allowing us to calculate how many parking spaces would be necessary for the site.

Mrs. Banks said no we do not know the number of bedrooms; we do not know how many spaces would be required or even if the applicant could get the required number of spaces on the site. Enough spaces would be required for all of the units and for maneuvering in and out of spaces; Norwood Street cannot be used for maneuvering in and out of parking spaces.

Mrs. Turner said I am not a designer of this type of project, but I do not know how the minimum required off-street parking could fit on this site.

Mr. Fletcher responded that he does not know if the applicant has planned that far in advance to know how many spaces would be required or where he would put them.

Mr. Snell said the parking issue is that if ten feet of right-of-way is dedicated that leaves only 20 feet and that is the bare minimum for a parking space.

Mr. Fletcher said it is still a 30-foot setback regardless if right-of-way is dedicated or not.

Mrs. Turner said the parking concern she has is if 18 feet is required for the parking space and a 24-foot travel aisle for cars to maneuver in and out, that is 42 feet. The applicant does not have that to provide and still maintain setbacks. There is also not enough width to do a lane down the side of the townhouses, but perhaps you could get a variance from that standard.

Mrs. Banks said he may be able to do a one-way travel aisle and angle the parking on the site.

Mrs. Turner replied it does not appear there is enough width to put in two entrances for that scenario.

Mr. Finks said are we considering amending R-3 for this request.

Mr. Fletcher said if the commission is considering something like that, then staff would want to have at least a month to review to see what the impacts would be across the city. It could be a density issue that we would want to look into.

Mr. Snell said if it were just a duplex design, the lots would remain what they are approximately 40 feet wide and 113 feet deep and they meet the area requirements; this is true of single-family homes also. Would not the same parking issue exist for the duplexes as it does for the townhouses?

Mrs. Banks replied no, your parking would be reduced. Duplexes are only required two off-street parking spaces. Also, with single-family dwellings and duplexes you can utilize the street to maneuver your vehicle in and out, as well as park vehicles one behind the other. Whereas with townhouses you have to have individual stalls for each space and provide a travel area to maneuver. Also, rear setback requirements are less for houses and duplexes in R-2.

Chairman Burden asked if there were any other comments. Hearing none, he added that he understands there was probably a good policy reason for that 112-foot number and that we always need to draw the line somewhere; but there comes a time when the practicality of the real issues at hand may recommend that you do not place that numerical figure as the top priority. This seems to me to be one of those times. In the future when something does happen along Norwood Street, I am certain that arrangements could be made; meanwhile this significant expenditure of capital into this area will have been made. It just seems to me to be difficult to hold to this numerical standard. As far as a precedent, that is a very serious issue, but we are here to see that the dominos do not fall too much.

Mr. Baugh said as I understand this, an important part of the standard is when we act favorably on these requests it should serve the larger interest of the community. That is what troubles me with this request; it is very clear that it benefits the property owner if we approve this. I am not certain we can make a case that somehow the City is going to be a better place if we allow this.

Chairman Burden asked if there was a motion on this request.

Mr. Baugh moved that we approve as staff recommends. We grant a variance to Sections 10-2-66 and 10-2-67 only.

Mr. Finks seconded the motion.

Chairman Burden asked for a roll call vote on the motion.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da'Mes – yes.

Commissioner Snell – no.

Commissioner Jones – yes.

Chairman Burden – no.

Chairman Burden stated the motion is approved (4-2) and this request will move forward to City Council on May 12<sup>th</sup>.

Mr. Chenault returned to Council Chambers and rejoined the Planning Commission at this time.



***Ordinance Amendment – Home Business Definition & Special Use Additions***

Chairman Burden read the request and asked for staff to review.

Mr. Fletcher said Dr. Harriet Clare Cobb, a faculty member of the Department of Graduate Psychology at James Madison University, who also has a limited clinical private practice at 1820 Country Club Road, is requesting to establish a new use for the City, which would allow businesses to operate within residential districts. The applicant intends to establish this use so she can treat several of her clients from her home at 950 Turkey Run Road.

The applicant would like the following definition inserted into Section 10-3-24, the definitions portion of the Zoning Ordinance: *Home Business: An occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within the main building or accessory building by a resident of the property. A home business shall only be comprised of an occupation or activity that does not alter the character of a residential neighborhood. There shall be no advertising on the premises, nor other display or storage or variation from the residential character of the premises. No person other than the resident(s) shall be employed and no equipment which is deemed to be in conflict with the intent of this definition is on the premises. A home business shall be no larger than an area that is equivalent to 25% of the primary structure's total finished floor area. All storage associated with the home business must be kept within that area. A home business could allow up to as many as eight (8) clients per day by appointment only. A home business shall operate between the hours of 8:00 a.m. and 8:00 p.m. Clients, customers, patients, etc., shall park on the property owner's driveway or along the public street, where permitted. There shall be no addition of parking spaces to accommodate the home business. Not more than one separate entrance or exit to the residence or accessory structure solely for the purpose of the home business shall be permitted. The creation of a separate entrance for the home business shall not be permitted on the front façade of the residential dwelling. If the property is part of a homeowner's/property owner's association, the applicant shall provide documentation from the association, which gives permission for the proposed use. Home businesses shall be limited to the applicant, the location, and the use described for which it was approved. Furthermore, the applicant shall comply with all local, state, and federal regulations that are pertinent to the home business.*

Staff has two concerns with the applicant's proposed language. First, the statement that declares, "a home business may only be comprised of an occupation or activity that does not alter the character of a residential neighborhood," staff believes is contradictory to the actual functioning of what would be a "home business" in our residential districts. The fact that a "home business" allows clients, customers, patients, etc. to travel to and from the home would, in effect, change the character of the residential neighborhood. Staff does not believe this statement should be included. Secondly, the applicant's proposed language does not specifically offer renters/leasers the option of operating a "home business," and staff believes this would not be an equitable approach for this use. Thus, staff would suggest a definition, which is very similar to the applicant's except for the removal of the above discussed statement of concern, and with added text that would allow renters/leasers to apply for a "home business." Staff's suggested definition is as follows: *Home Business: An occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building by a resident of the property, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in*

*connection with which no person other than residents are employed and no equipment which is deemed to be in conflict with the intent of this definition is on the premises. A home business shall be no larger than an area that is equivalent to 25% of the primary structure's total finished floor area. All storage associated with the home business must be kept within that area. A home business could allow up to as many as eight (8) clients per day by appointment only. A home business shall operate between the hours of 8:00 a.m. and 8:00 p.m. Clients, customers, patients, etc., shall park on the property owner's driveway or along the public street, where permitted. There shall be no addition of parking spaces to accommodate the home business. Not more than one separate entrance or exit to the residence or accessory structure solely for the purpose of the home business shall be permitted. The creation of a separate entrance for the home business shall not be permitted on the front façade of the residential dwelling. If an applicant rents/leases the residence, they shall provide documentation from the property owner, which gives permission for the proposed use. If the property is part of a homeowner's/property owner's association, the applicant shall provide documentation from the association, which gives permission for the proposed use. Home businesses shall be limited to the applicant, the location, and the use described for which it was approved. Furthermore, the applicant shall comply with all local, state, and federal regulations that are pertinent to the home business.*

Staff advised the applicant that if the "home business" definition was added to the Zoning Ordinance, the best approach would be to require applicants to obtain a special use permit; therefore, the applicant would like to add "home business" as a use allowable by special use permit within the R-1, Single Family Residential District (Section 10-3-34). If Planning Commission and City Council would like to adopt this use and add it as a special use permit within the R-1 zoning district, then staff believes it is appropriate to add "home business" as a special use within each residential zoning classification (Sections 10-3-40, 10-3-46, 10-3-48.4, 10-3-52, 10-3-55.4, 10-3-56.4, 10-3-57.4, 10-3-58.4, and 10-3-180).

The applicant started this process after staff received an anonymous concern that she was making renovations to her home to accommodate her private mental health practice. Staff notified the applicant and discovered she was making renovations to her home without the proper building permits, and intended on operating her private practice, in a part time manner, from her home at 950 Turkey Run Road. Dr. Cobb has diligently pursued rectification of her violations and has worked with staff to formulate the above definition that would legally allow her to operate her private practice from her home.

Staff researched and investigated how other municipalities control business-type uses in homes in residential districts and found that it varies from locality to locality. Many localities refer to this type of use as a "home occupation" and either administratively approve the request or specifically require special permission to have a business in a home. Although each locality was different, general regulations included: limiting the hours of operations, limiting the types of uses, regulating the appearance of the dwellings, limiting or prohibiting advertisements, excluding commercial deliveries, restricting or prohibiting customer/client visitations, and often restricting the sale of goods. The results of our investigation revealed that the City's current regulation upon businesses in homes is not uncommon. The City currently allows a by-right use called a "home occupation," which is defined as: *Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the*

*premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' or dentists' offices for the treatment of patients.* In other words, the dwelling and the physical lot shall not be altered in any way that would distinguish it from being anything but a residential use and the general public should have no way of knowing there was a home occupation inside the dwelling because no signage is permitted and no clients, customers, patients, or employees can travel to and from the home.

The "home occupation" permit is often triggered by the Commissioner of Revenue's office because when citizens apply for a business license at their home address, the Commissioner of Revenue's office will not grant the business license until they have received approval from our office that this type of use is permitted under the "home occupation" guidelines. The permission is administratively approved, primarily for record keeping purposes, and simply requires the applicant to read through the definition of a home occupation and sign the consent form, which states that they understand the rules. Once citizens find out what the regulations are for "home occupations," they either agree to abide by the rules, or move on to other alternatives to run their business. Staff does not have difficulty enforcing "home occupations" as we have very few concerns with uncooperative "home occupation" applicants.

Notice the proposed "home business" definition is very similar to the existing "home occupation" definition. The main differences between the two are that "home businesses" would be required to receive a special use permit; clients, customers, patients, etc would be permitted to travel to and from the home, and some renovations would be permitted to accommodate the "home business." The "home business" definition was specifically designed around the "home occupation" use because it has been a successful and practical method in regulating businesses in residential districts.

Staff has deliberated and considered the potential impacts of allowing this type of use for the past couple of months and concluded that adopting this use is not in the best interest of the City. Although we are not recommending approval of the amendment, staff has worked closely with Dr. Cobb on the language to come up with restrictions we feel are reasonable if Planning Commission and City Council decide to amend the ordinance. Staff understands that current planning and environmental theories support the mixture of uses for many reasons, several of which include providing more housing choices and opportunities, encouraging revitalization efforts, creating a sense of community, and lessening our impact on the environment. These are some of the reasons why staff encouraged and helped develop the recently adopted MX-U, Mixed Use Planned Community District. One should understand, however, that the City already has ways to live and work in the same environment. The aforementioned MX-U district as well as the B-1, R-6, and R-7 districts permits commercial and professional uses in addition to residential dwellings. Also, with the required lot area, the applicant could run her proposed professional office, by right, within the R-3 or R-4 districts, or with an R-P, Professional Overlay. One should understand however, that if someone were to have their dwelling unit and their business/professional office located on the same property, they would be required to supply the appropriate amount of parking for their business (except within the B-1 category). The proposed "home business" provision would not require and would not allow parking facilities at the property.

Staff recognizes the potential of the applicant's practice, in isolation, to have minimal impact on her neighborhood. Throughout the years, staff has received many inquiries from people interested in

establishing businesses at their property that would involve traffic to their homes. They have chosen to either change the nature of the business to eliminate traffic, rent commercial space, or have decided not to enter in to the business. Staff has had many different uses questioned over the years; examples have included but are not limited to occupations such as message therapists, beauticians, dog groomers, accountants, and so forth. Adopting the proposed “home business” use and encouraging additional traffic could cause unnecessary strain and pressure on many of the City’s single family neighborhoods. The R-1 and R-2 zoning classifications are the primary districts where people invest in single family homes because of the existing regulations that protect their property investments. Generally, the citizens of Harrisonburg rely on the R-1 and R-2 zoning regulations to protect the unwanted infiltration of non-residential uses into their neighborhoods. Adopting this use could create unwanted situations and set precedence for unwelcomed uses. If approved, there may be many businesses currently occupying commercial spaces who will feel they could fit into these parameters and operate from their homes.

As stated above, staff has worked with Dr. Cobb on this language and believes the restrictions proposed are reasonable. Staff would like to point out, however, that permitting business traffic will make enforcement of these restrictions very difficult. Currently, if we receive a complaint, we can find whether there is any traffic to the home easily because of the restrictions placed upon “home occupations.” If the amendment is passed, it will be very difficult and time consuming to monitor numbers of customers if we receive concerns about these businesses. Staff believes this problem cannot be overcome by any change to the proposed language, but that it is unavoidable with any provision that allows traffic.

Staff recommends denial of the ordinance amendment to add “home business” to the Zoning Ordinance. If, however, Planning Commission and City Council approve this definition addition, staff recommends in favor of adding “home business” as a special use permit within the following Sections: 10-3-34 (R-1, Single Family Residential District), 10-3-40 (R-2, Residential District), 10-3-46 (R-3, Multiple Dwelling Residential District), 10-3-48.4 (R-3, Medium Density Residential District), 10-3-52 (R-4, Planned Unit Residential District), 10-3-55.4 (R-5, High Density Residential District), 10-3-56.4 (R-6, Low-Density Mixed Residential Planned Community District), 10-3-57.4 (R-7, Medium Density Mixed Residential Planned Community District), 10-3-58.4 (MX-U, Mixed Use Planned Community District), and 10-3-180 (U-R, Urban Residential District).

Staff would like to point out that if these amendments are approved, all existing music teachers that provide lessons within their homes would be considered non-conforming. They would be allowed to continue only if they maintained their non-conforming status. Any future citizen that would like to provide this service would be required to apply for a special use permit and go through the public hearing process at Planning Commission and at City Council.

Chairman Burden asked if this were adopted would the only applicants that could apply for it be the ones that are specifically excluded in the definition of home occupation.

Mr. Fletcher replied no. This would open up many, many different uses and it would be circumstantial as to what it could be. It could be a retail establishment, professional office, personal service, or other. You could argue that many of those uses may not wish to apply because the way this ordinance is written is that people can only come to the location by appointment only; therefore, if you are a retail type use you would not necessarily be “open” for business, you would have to set your appointments up.

Mr. Baugh asked in reviewing language from other jurisdictions did you get any feedback from anyone who allows something like this and whether they feel like it is working for them.

Mr. Fletcher said no, I did not. I am glad you asked that question, because some of the numbers we came up with were not completely arbitrary; some were taken from other municipalities that we thought would work well with what we were proposing.

Mr. Finks said when you mention retail and discuss deliveries being made; I do not see that in any of the language.

Mr. Fletcher said I listed that as a general guideline. Other municipalities had put in their ordinances that they would not allow commercial deliveries.

Mr. Finks said that could limit a retail establishment if you could not have commercial deliveries.

Mr. Da'Mes asked why not include the language of limiting or no commercial vehicles.

Mr. Fletcher said we could, but we approached it in the manner that it is a special use permit and we could make it a condition.

Chairman Burden asked if there were any other questions for staff. Hearing none, he opened the public hearing and asked the applicant or applicant's representative to speak.

Ms. Harriet Cobb of 950 Turkey Run Road, said she resides on a wonderful, short, but sweet street, flanked by Neyland and Sunrise Avenues. What I am proposing, as you have read, is to see clients out of an office in my home. I have a part time clinical practice and my primary employment is at JMU. I thought of doing this, at this stage in my life, because my kids are grown and because my practice is only part time; I felt it would be a wise use of living space. Of course, I would certainly not want to do anything to this neighborhood that I cherish or that bothers my neighbors. I did inquire of my neighbors and they said they had no objections to this; and in general conversations with other individuals in R-1 neighborhoods I heard that it is not unusual for someone to have a little "something", for lack of a better word, in their home that does not bother the neighbors. Something like a website designer who would have people come to the home to study and review the web site, not all of it takes place over email. I am speaking of activities that really are of a part-time nature. Please do understand that I am not advocating for a full time business operating in a neighborhood. I see these activities as being conducted by residents who would like to exercise general constitutional freedoms. To do tutoring, to provide music lessons, or maybe sell a little jewelry on the side, or perhaps cosmetics that they have invited people to come look at in their home. These are just some of the examples of activities that we know do occur. Not that this is necessarily a reason to advocate for a change, but it is data.

Having been a resident of the City for decades, I do care about the quality of life in Harrisonburg and for me the quality of life at this stage in my life meant looking into the future and asking what about operating my practice from my home. Looking into my future as a retired person when I am no longer working at JMU, I may want to continue to see a few clients that are appropriate part-time. The landlord of the property where I currently rent has offered me the option of renting by the clinical hour. I do see individuals with disabilities and they may be better served there. I first started out really wanting this just as an individual; then I thought that this actually could be a good idea for other residents in Harrisonburg, particularly since, by practice, some of these other activities may already be going on. If the City does not know about them it is because they are discreet, respectful, and do not alter the character of a residential neighborhood.

As I said, I am first advocating for a special use permit for me to conduct this business in my home, which does no harm and is a service occupation that is a practice or activity that I can feel proud of. I also thought this is something that would be about quality of life for residents in Harrisonburg. Of course we must balance the question “what about precedence” and “what about innovation”; but if we only did things by precedent, there would be no innovations. On the other hand, you do not want to change the social contract that residents of R-1 neighborhoods have with each other; we move to these neighborhoods and invest our money because we want a quiet spacious neighborhood. So to me these things were important to whatever I proposed. I am only thinking of something part-time, not a full-time business in my home; so I actually was thinking about just eight clients a week. The language proposed for eight clients per day and 8:00 a.m. to 8:00 p.m. was not my language; I would not propose something that large for my neighborhood. Finally, in terms of greener for the City; it is a greener move to have one less car on the road. I would certainly be glad to take any questions you might have in this thinking aloud process.

Chairman Burden asked if there were any questions for Dr. Cobb. Hearing none, he asked if there was anyone else who would like to speak for the applicant.

Mr. Tom Knapp of 945 Turkey Run Road, said he resides directly opposite of Dr. Cobb. We moved to this home in 2006 with the idea that I was moving into an area that did afford me the type of lifestyle that I expected to grow into and grow old in, and that was a residential R-1 neighborhood that was quiet. That dream of quiet has changed and I have created part of that change. In many ways I created more of a situation that is probably above and beyond what Dr. Cobb is suggesting to do. I am a parent of multiple teenagers that has a lot of traffic to and from the house. We do have more traffic than what I see at Dr. Cobb’s dwelling. Another situation is I am a small group leader at my church and I have people coming to my home every week. My wife has a disability which makes it very difficult for her to go out and go shopping, in fact she does most of her shopping through the internet and therefore we have UPS and FedEx that come routinely down our street; that was not the case when we purchased the house. I know this has been an undue burden that I have put on my neighbors by having that. My wife is also a member of a small group club and she has people come over during her club time each month. So you can see in fact that the home that I purchased in a very quiet neighborhood is in fact, just by my living there, I have increased the amount of traffic.

I do not see that the language put forth here tonight by Mr. Fletcher causing any undue harm with respect to seeing this move forward and allowing the type of usage that Dr. Cobb is proposing.

Chairman Burden said to Mr. Knapp since we are discussing the ordinance at this time, how would you feel if there were large amounts of goods being stored there and sold, more like a retail store. What if eight people came every day, does that seem different or do you feel all home businesses could be looked at the same.

Mr. Knapp replied that it really has to do with what the intent of an R-1 neighborhood is. That is, the business should be quiet, and not intrusive to the character of the neighborhood. Certainly if you are looking at goods as opposed to services, I think in fact that you may see some of the traffic that would be undesirable. I do not believe that a service, especially with the language proposed tonight, would cause anything undesirable.

Chairman Burden said he is asking because as he reads the proposed language he wonders what are more preferred businesses than others. He then asked if there were any other questions for Mr.

Knapp. Hearing none, he asked if there was anyone else who would like to speak for the applicant. Hearing none, he asked if there was anyone wishing to speak opposed to the request. Hearing none, he closed the public hearing and asked Planning Commission for their discussion.

Mr. Finks said he must admit he has had a slight epiphany after listening to the speakers. I regularly go to a home in a rather exclusive neighborhood in Harrisonburg, to pick-up cosmetics for my wife. I guess that business is operating outside the law right now. I know people who are selling jewelry and cards from their home. We are also getting ready to review a request to have up to 12 children as a day home from a dwelling. Can we actually police what is going on now; obviously these things are going on.

Mr. Snell said he thinks staff has done a great job preparing the language. In the staff report, the fifth paragraph is the staff suggested definition; this does not match the one in the ordinance amendment.

Mr. Fletcher said that is Dr. Cobb's language that is put forth in the amendment. If it were approved with the suggested language, I think that the applicant would be okay with that. She wanted to come across that she did not want to cause any undue hardship on a neighborhood. I believe her language is very similar to what we meant in our first few statements in our proposal; we just disagreed with some of the actual intent of the sentence.

Dr. Cobb asked which sentence Mr. Fletcher was referring to.

Mr. Fletcher replied the sentence that reads "A home business may only be comprised of an occupation or activity that does not alter the character of a residential neighborhood." He then invited Dr. Cobb to speak on why she wanted this sentence.

Dr. Cobb said it seemed to be the main principle here that I wanted to communicate when it came to a home business. We want the opportunity to do an activity in our homes that does not alter the character.

Mr. Fletcher said I had spoken with Dr. Cobb about understanding her intent for the statement. Staff just did not think it was fair to say that these activities would "not" alter the character of a neighborhood, because just allowing it does alter the character.

Mr. Snell said I agree with staff, if you have a home occupation, just the fact that it is there and it generates traffic alters the residential character. To have that sentence makes it tough for the future; we all understand what we are talking about here, but there could be the disagreement in the future that any occupation alters a residential neighborhood.

Mr. Fletcher said the other statement that Dr. Cobb wished to remove from the original was regarding renters; "If an applicant rents/leases the residence, they shall provide documentation from the property owner, which gives permission for the proposed use." Staff felt it was the most equitable approach by allowing that to occur; whether or not Dr. Cobb agrees to that I do not know.

Dr. Cobb said the only reason I said home owner was that I did not want you to think I was proposing something for all the students to have. But I do feel that home owner implies the immediate responsibility for what happens in that home; I thought it made the case stronger. It is not that I want to limit responsible behavior.

Mr. Fletcher said please remember we are looking at the ordinance amendment, which requires people to apply for a special use permit, as a package deal with the special use permit. We could

discuss this all day and think of different situations or businesses that people could come up with and we did not want to limit someone's potential application in the future. If it is a special use permit, it can be limited further and that is why it was written in vague terms. Just keep in mind that there are two requests going on with this, the ordinance amendment and the special use request. The special use permit does give us more regulatory control to put conditions on each different application.

Chairman Burden said I could easily see this home business being defined to just include the provision of services and not about the sale of goods. I feel goods are a different thing from the providing of professional services. What is the reason to not draft this new language to only include what is being asked of us here?

Mr. Fletcher responded we did discuss that and other situations. We talked about drawing a line between if someone were doing a use very similar to Dr. Cobb, or if someone were doing more of a retail use. There is no difference, other than your commercial deliveries, or number of people coming and going.

Mrs. Turner said we came up with several scenarios where, among ourselves, we could not decide whether something was a service or retail type use, because it had components of both. We talked about a custom cabinet maker or a furniture maker, who is creating something to fit into someone's specific area.

Mr. Fletcher said we also discussed a hairdresser who operates by appointments; yet also sells a high-end shampoo that is offered to her customers.

Mr. Baugh said he is concerned about the enforcement aspects of doing something like this. I am concerned about the fact that we do not have a whole lot of participation here tonight and then among other things we have a group of music teachers who, should this get changed, there is the potential that they would be operating under a very different set of rules than they think. This is not a movement, Dr. Cobb does not represent a committee of concerned citizens who want to change this, we want to see this; it is something she wants to do at this time. I wonder whether there is not another way to do this. We have a different rule for music teachers because sometime, years ago, music teachers came forward and the home occupation was debated but not changed. Now we have someone who wants to do professional counseling; maybe the answer should be no change as before. Let's just come back with something that allows this applicant to do what they want to do and then wait and see if down the road people are coming back to us asking for more expansion of home occupations. Then we could go back and look at it more in depth.

Mr. Chenault said I share in Mr. Baugh's thoughts and feel that this is a pretty innocuous burden on a property in the neighborhood. I agree that enforcement of this ordinance is absolutely impossible, it cannot be done. Additionally, I can tell you, thirty years ago almost every home in Sunset Heights had a service industry in it; from printing presses to cosmetic sales. I am not sure this is a can of worms we want to open up at this time when it is not a significant issue from a neighborhood standpoint. The other thing is it is difficult to give a special use permit to this applicant and then someone on Crawford Avenue comes in and wants to conduct the same home business, but we have to tell them no because the homes are closer together, traffic is a concern in the much more densely populated neighborhood. Perhaps the way to address this at this time is to, rather than opening up a new special use, why not enlarge our definition of a home occupation. This can also be looked at on a larger basis when we come up with our Comprehensive Plan review, which starts next week. It



just seems to me that it is not sound practice to have ordinances that we cannot enforce. To me what the applicant wants to do has very little difference than a music lesson and I think it would be better to address this type of usage on the basis that we are doing it now because the City does not seem to be falling apart, nor our neighborhoods. This would give us some time to take a harder look at the larger issue of where we want to be going with uses that have heavier effects on neighborhoods than this particular one.

Chairman Burden said the home occupation provision which caused this to come our direction is the exclusion of beauty parlors, barber shops, doctors or dentist offices for the treatment of patients; this language comes from the early 1960's. I have to think that the framers of that provision were not thinking of this particular use when thinking of doctors.

Mr. Fletcher said the approach you are talking about is crafting an ordinance that is a bit more professional type in use and character; that was actually our first approach at this. We talked about creating an ordinance that was specific to professional uses such as Dr. Cobb's; but we felt that the special use approach would allow applicants to come up with different scenarios and not be so specific. Because it would be a special use it allows us to take a closer look at each of these individual cases and to apply conditions where necessary.

Mr. Chenault said to answer Mr. Burden's previous question, in Harrisonburg during the 1950's and 1960's it was not unusual to have a beauty parlor on every street in someone's house. There were doctors in town that practiced only out of their homes. I suspect that as the community developed that is why these definitions came to be in these ordinances. I understand where staff is coming from with this; but I do not want to rush in to this and then having to apply somewhat, maybe, unfair criteria. When we do get to that point we can start looking at the heavier impacting uses; but at this point, a counseling practice or a part time accountant that only see five or six persons a week, I think that is covered in the criteria.

Mr. Finks said that is a very good point. I can think of other places where people are doing businesses and they have no idea that it is against the City regulations; it is just what they have normally done.

Mr. Baugh said if they are reporting it on their taxes they are probably getting picked up. I am sure it is not 100%, but they try to catch folks that have something like this going on.

Mr. Chenault said the other thing I was thinking was, what if we moved some of the more restrictive items, such as the hours and the number of persons, over into the definition of home occupation, so that we have some assurance that it is a little tighter when enforcing.

Mr. Da'Mes said I realize what we are trying to achieve here, yet the definition of a business is a transaction of goods and services. Where as a home occupation by definition is simply occupying your home doing a business out of it without having the transaction between individuals. I do not see where, by right, you could incorporate a service, such as Dr. Cobb, into a home occupation.

Mr. Chenault said because it is not the same thing as goods and services; it is the same thing as piano lessons.

Mr. Baugh said music lessons are actually a special case and that is what my suggestion is. Is there a way to turn this low impact therapy or professional counseling into something like you did with the music lessons?

Mr. Fletcher said another way we could handle this tonight is to continue forward with the ordinance amendment going to Council and during the time between now and the Council meeting we could work at rewording this more stringently.

Mr. Snell said this is a special use amendment for something that is already a use allowed by right. The only difference is the home occupation excludes doctors and dentists.

Mr. Fletcher replied no, that is not correct. Dr. Cobb could not be defined under the home occupation because she has traffic that comes and goes from the home. By definition, no one who has a home occupation should have anyone coming to their home.

Mrs. Turner said we tell a lot of people who want to have a home occupation that they cannot have traffic coming and going from the home, even if they are not those few exclusive things listed in the definition.

Mr. Snell said then where are the piano teachers.

Mrs. Turner said the piano teachers are excluded because years ago we had told someone they could not get a home occupation permit for piano teaching and they came in to the public input session of the Planning Commission and made a case that music education in the City of Harrisonburg would die off if they were not allowed to have lessons in their homes. Everyone felt fairly sympathetic to that and thought that they should be treated special, so we overlook those. That is the only exception.

Mr. Snell said it is not the only one. The State mandates that we have to allow child care for up to five children. We are issuing home occupation permits regularly, is that safe to say?

Mrs. Turner said we issue them, but we are telling them that they are not to have traffic coming and going from the home because of the home occupation. If they do and a neighbor complains, then we are able to go out, take a look, and see if there is a problem. Then we can approach them and tell them to stop operating as such or have their permit revoked.

Mr. Chenault said I can see the term services defined as not involving the sale of goods, or the collection of sales tax. You could go further by not allowing the installation of any specialized equipment or the keeping of inventory.

Mr. Da'Mes said under the term service you still open Pandora's box to a lot of undesirables.

Mr. Chenault said he understands that, but there is a significant issue here in town with neighborhood preservation, particularly in R-1 and R-2 districts and he has a real problem with opening up neighborhoods to higher impact businesses. I do think that someone should be able to go into a neighborhood, knowing it is R-1 and not suspect that two years later we may give them a special use permit to have a photography studio or to sell sports equipment. I think we need to limit this to very tailored, property types of services.

Mrs. Turner said we were a bit worried because we did not want to make anyone who currently has a home occupation and operates it by the rules; we did not want to make them non-conforming. If you start saying you cannot have commercial deliveries, or stock inventory, there are probably people out there who are having those things in connection with their home occupation; we just have not received a complaint about them. There are people who are making products from their home, they are stockpiling goods at their home; they just take them to a craft show, or to someone

else who is selling things for them. If we want to change the language of home occupation, we want to make certain we are not making someone non-conforming who is currently conforming.

Chairman Burden said that language from the 1960's is interesting because those are the very uses that had people coming to the door. If indeed all the proceeding language in home occupation were to be interpreted as no traffic coming to the house, then why was there the need to have that last sentence? I know you have looked at this much more than I have, but I humbly submit that it might be possible to deal with this again by just adjusting the home occupation definition.

Mr. Chenault said can we make any existing home occupations not become non-conforming by saying that "as of the effective date of this ordinance". I know that State law does it all the time with ordinances going into effect.

Mr. Fletcher said if we amend the definition to begin to allow people to come and go from a home occupation, no one should become non-conforming; they would just be getting extra privileges.

Mrs. Turner said if we worded it just that way. If we worded it such that it could not involve the sale of goods or storage of goods, then all those people would become non-conforming.

Mr. Da'Mes said what if this proposal allowed for a distinction where staff could issue the home occupation, yet if they do want to broaden their definition of home occupation it would fall under home business and it would need to come before us.

Mrs. Turner said we also need to look at how we would explain it to someone when they are standing at the counter. There are some things that you can never fully explain. Right now if we have someone with a home occupation who makes cakes in her house, what we tell her is she is supposed to deliver those cakes, no people can come to her home. Now someone else who wants to do professional counseling moves in next door to her and we give them permission to have five or six people a day come in for appointments; yet we are not letting the lady who makes cakes have people stop by. This would be very hard for us to explain that to a customer at the front counter.

Mr. Baugh said we keep going back and forth with this; but here is what I was going to put forth, this is where my thinking is leaning. You could keep the home occupation exactly as it is now, do not change anything and then add a sentence to it. Something along these lines, "The foregoing notwithstanding giving music lessons and providing professional counseling services by appointment only and for not more than eight clients per week shall constitute a home occupation". Just as the sentence before that defines out certain things, the new sentence defines in things. We have the exception we made for music teachers, and we all know we have the exception; but it is not written down anywhere. We could make this change and then just see what happens. I am thinking this opens the door for Dr. Cobb and perhaps a few others to do this and then we can deal with expanding this if it comes up at a later date if necessary. We can certainly look at this as a general issue in the Comprehensive Plan review. That is where my thoughts are on this now.

Chairman Burden said he likes that idea; it goes where the problem is and does not necessarily make a whole lot of broader changes. In that unofficial proposed language you say up to eight clients a day.

Mr. Baugh said I just pulled that from what staff had said when they tracked what other ordinances elsewhere seem to go with. One of the points that Dr. Cobb was very clear about was that eight clients a day was well beyond anything she has envisioned. Obviously, I am not trying to say eight clients a week is something that should be carved in stone or may need further discussion. But it

might make more sense to focus on giving Dr. Cobb what she wants and worrying about what other people want for more expansive things if and when they come forward.

Mr. Fletcher said we can do the Commission's wishes or, we can continue forward with the ordinance amendment, craft the proposed ordinance more stringently, more towards a professional type use, and then put regulatory mechanisms in.

Mr. Baugh responded the thing I do not like about that is it seems to get us back on the path where we vote on something that is no more than a concept and then when it goes to Council, they are not reviewing what Planning Commission looked at.

Mr. Fletcher replied no. If you are agreeing to the general concept tonight we could craft something along those lines and it would have been discussed. Or we could table this, come up with some language, have it reviewed by Planning Commission next month and then move on.

Mr. Baugh said that is where he stands. If we are making a recommendation to Council, I feel we need to review what Council is actually looking at.

Mr. Chenault said I like Mr. Fletcher's suggestion; I think it addresses the intensity of the use which is the biggest issue that we are having tonight.

Mr. Jones said he liked what Mr. Baugh had proposed and suggested he offer it in the form of a motion. Then if we feel we need to take a harder look at this we can do so during the Comprehensive Review. That way we have addressed this issue and Dr. Cobb could get on with what she wants to do.

Mr. Baugh said I am prepared to make the motion for the language that I suggested. But there is also the option of Dr. Cobb tabling this so that she could ponder over it a bit more.

Dr. Cobb said she certainly appreciates all this discussion and looking at the issue from an individual citizen as well as the community. I would like to move forward with this tonight, because it sounds like you see the low impact, do no harm, nature of the business. It seems reasonable to me that this could be a larger discussion that involves more of the community, so I am fine with moving this on.

Mr. Baugh asked regardless of what the Commission does with this you are fine with moving forward with what I suggested.

Dr. Cobb replied yes. That covers me and I support thinking about what other community residents may want.

Mr. Baugh moved that we not adopt any of the proposed language but take the existing home occupation definition and add a sentence at the end that would be – “ The forgoing notwithstanding, giving music lessons, and providing professional counseling services by appointment only and for not more than ten clients per week, shall constitute a home occupation”.

Mr. Finks seconded the motion.

Chairman Burden said procedure wise we are abandoning what was brought to us and what has been proposed would need to go through a public hearing process.

Mr. Baugh said if we approve this language we are going to have to hold a new public hearing on it. I am not prepared to support what was brought before us tonight, so we will probably be looking at it again next month anyway. If my motion carries then we know what course we decided to follow.

Mr. Jones said it seems to me if no action is taken on what is proposed on the agenda then it dies for lack of a motion.

Mr. Fletcher said there has to be some type of action. What could be done is to table it; along with the special use permit. To be technical we should open the public hearing and close the public hearing on Dr. Cobb's special use permit request so that there is no further cost to Dr. Cobb. It could be continued or tabled.

Mr. Chenault suggested that Planning Commission act on the motion that was currently on the table. Then we can address the amendment and special use request.

Chairman Burden asked for a roll call vote on the motion for the language proposed by Mr. Baugh regarding amending the definition of home occupation.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da'Mes – yes.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said the motion proposing to amend the definition of home occupation passes (7-0) and will be brought before Planning Commission next month.

Mr. Chenault further moved that the ordinance amendment on tonight's agenda regarding home business as special use be tabled until next month.

Mr. Baugh seconded the motion.

Mr. Snell said if this vote carries we do not have a special use permit for consideration tonight.

Mr. Fletcher said it was advertised; therefore you will need to do something with it.

Mr. Baugh said perhaps we should hold the public hearing and table that request too; it will then carry over to next month. Then next month we could go with the motion I made for the definition change, and that will at least give the applicant something to move forward with.

Chairman Burden said the motion before us now is to table the ordinance amendment regarding home businesses by special use permit until the May meeting. He then called for a voice.

All voted in favor of the motion to table (7-0). Chairman Burden then called a recess at 9:05 p.m.

Chairman Burden called the meeting back to order at 9:15 p.m.

***Special Use Permit – 950 Turkey Run Road – Home Business (10-3-34(9))***

Chairman Burden read the request and asked staff for comments.

Mr. Fletcher said he can proceed with the staff report or Planning Commission can just move forward to the public hearing at this time.

At this time Planning Commission elected to move forward with just the public hearing portion of business.

*The following italicized print is the prepared staff report that was not presented by staff. It is only included for reference.*

*The Comprehensive Plan designates this area as Low-Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.*

*The following land uses are located on and adjacent to the property:*

Site: Single family home, zoned R-1

North: Single family home, zoned R-1

East: Undeveloped single family home lot with frontage along the undeveloped right-of-way of Oak Drive, zoned R-1

South: Single family home, zoned R-1

West: Across Turkey Run Road, single family home, zoned R-1

*In anticipation of City Council approving an ordinance amendment to adopt “home business” as a new use allowable by special use permit, Dr. Harriet Clare Cobb is concurrently requesting a special use permit per the newly proposed Section 10-3-34 (9) to allow a “home business,” within the R-1, Single Family Residential District. Her home is located at 950 Turkey Run Road and is designated as Low-Density Residential by the Comprehensive Plan.*

*Dr. Cobb is a faculty member of the Department of Graduate Psychology at James Madison University. She has maintained a limited clinical private practice for the past 26 years, most recently operating from 1820 Country Club Road. Dr. Cobb would like to conduct her limited private clinical practice from her home, which she owns and has lived in since 2003, where she would consult with a variety of clients. If approved, Dr. Cobb said she will maintain consulting with clients at the Country Club Road facility for those clients that it may not be particularly appropriate to meet in her home.*

*If the definition of “home business” is approved as presented, Dr. Cobb would only be permitted to receive eight clients per day, by appointment only, and between the hours of 8:00 a.m. and 8:00 pm. No one other than those that reside at her home can be employed by the practice; however, Dr. Cobb does not anticipate the necessity of additional employees. Her clients would park in her driveway or on the public street, as defined by the “home business” definition. They would be provided with a secure and confidential entrance along the northern side of her dwelling that was built specifically for her practice. Her “home business” would be contained within two rooms, a waiting room and her practice room; this area is approximately 22 percent of her dwelling’s total square footage. Clients would also be accommodated with a bathroom facility that is accessible from the waiting room.*

*When the counseling session is over, clients have the option of exiting directly from her practice room, which has an existing egress into the backyard patio area of her dwelling. This option allows for private departure from clients that may be waiting in the waiting room. The backyard patio area reconnects with the entrance walkway that leads to the driveway.*

*Although staff did not support the ordinance amendment to add “home business” as a use permitted within the city, if City Council adopts this use, staff believes that Dr. Cobb’s proposed use would operate at a level that would have as minimal impact to the neighborhood as can be expected from a “home business” of this type. Dr. Cobb would not be selling, producing, or repairing goods, she would not be storing any equipment that is unrelated to a single family dwelling, nor does she anticipate any deliveries that are uncommon to a*

*single family dwelling. She expects no more than eight to ten appointments per week, which is traffic that is arguably equivalent to or less than the disruption and commotion caused by large single families that have multiple drivers. However, one must keep in mind that Dr. Cobb would be able to have as many as eight clients per day. The additional entrance, created for her "home business," is placed in an inconspicuous location that cannot be seen from the public street; and her clients will be able to park in her driveway that has the capability of accommodating approximately three to four vehicles. Dr. Cobb is the only occupant of her dwelling, therefore other than the occasional visit from family and friends, the coming and going traffic should not appear to be any more troublesome than a traditional single family home. Furthermore, the subject property is part of a neighborhood where most of the homes are well above the required 10,000 square foot minimum lot area requirement of R-1 zoned properties; this has allowed for larger areas between the dwellings as the northern side of her home, where the "home business" would be located, is approximately 50 feet from her next door neighbor's dwelling, and her house is roughly 60 feet from her neighbor's house on the southern side of her property.*

*As noted above, staff believes the proposed use would have minimal impact to the surrounding residential district and supports a favorable recommendation to City Council with the following condition:*

- 1. If City Council finds the "home business" too damaging to the surrounding neighborhood they may require the applicant to return to Planning Commission to re-examine the use of the property. It shall be at the discretion of Planning Commission and/or City Council to determine if the re-evaluation shall necessitate a public hearing. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.*

Chairman Burden opened the public hearing for the special use permit request at 950 Turkey Run Road and asked if there was anyone wishing to speak in favor or opposed to the request. Hearing none, he closed the public hearing and asked Planning Commission for a motion.

Mr. Chenault moved that the Planning Commission continue this matter until the next regular meeting in May.

Mr. Finks seconded the motion.

Chairman Burden asked if there was any discussion. Hearing none, he called for a voice vote.

All voted in favor of tabling the special use permit request for a home business until next month (7-0).

### ***Ordinance Amendment – R-3 Boardinghouse or Roominghouse Language Change***

Chairman Burden read the request and asked staff to comment.

Mrs. Banks said she will present the next two agenda items together and then Planning Commission can open separate public hearings for each. City staff is proposing to amend the Zoning Ordinance Sections 10-3-46 (1) and 10-3-48.4 (1); these Sections allow application for Boarding and Rooming Houses, as a special use permit, within the R-3, Multiple Dwelling Residential District and the R-3, Medium Density Residential District.

Currently, each Section reads as follows: *Boarding and rooming houses, complying with conditions as defined under Article F, and limited in occupancy by one person per designated bedroom.* Staff has always interpreted this statement to mean that occupancy of a particular boarding or rooming house was limited to the number of bedrooms that are designated for the tenants of a particular structure. For example, if a boarding or rooming house structure had four bedrooms, only three tenants could live in the structure because one bedroom must accommodate the owner or lessee, who must reside on the premises. Recently though, a question arose about the occupancy of a

potential boarding or rooming house, which would be operated by Eastern Mennonite High School. In this particular situation, the boarding or rooming house's bedroom facilities were large enough to accommodate more than one occupant per bedroom and they questioned the interpretation of occupancy restrictions under the boarding and rooming house special use permit language. Staff discussed this interpretation in depth and ultimately decided there could be unique situations where our current occupancy interpretation could be considered too stringent.

Staff would like to add a statement to the end of the existing text to offer flexibility in unusual circumstances so applicants can utilize all of the benefits presented by the boarding and rooming house use. If approved, both of the above Sections would read as follows: *Boarding and rooming houses, complying with conditions as defined under Article F, and limited in occupancy by one person per designated bedroom unless otherwise specified within the special use permit.*

This additional language would not alter the intentions of the use nor would it allow for an increase in occupancy beyond that specified in the definition, which is ten occupants.

Staff supports a favorable recommendation to City Council.

***Ordinance Amendment – Boardinghouse or Roominghouse – M-1 Special Use Permit Addition***

Staff would also like to propose amending the Zoning Ordinance Section 10-3-97, the special use portion of the M-1, General Industrial District, by adding "boarding and rooming houses" as a use allowable by special use permit.

Recently, there has been a lot of discussion about boarding and rooming houses and staff believes there could be positive and effective justifications for allowing this type of use in the industrial district. Currently by-right in the M-1 classification, property owners can operate hotels, motels, and similar types of transient accommodations, and in many respects, boarding and rooming houses function like transient housing. Allowing this type of use would offer property owners with small lot residential uses and/or residential structures that exist as M-1 zoned properties the option of applying for this special use permit, which could offer them the opportunity to market their property in a more appropriate manner. It also could offer those that are interested in operating a boarding or rooming house more options and additional locations that may be more suitable and away from established single family neighborhoods.

Staff proposes to add the same language that exists in the R-3 districts, and also proposes to have the same additional statement that offers flexibility in the occupancy. The special use would read as follows: *Boarding and rooming houses, complying with conditions as defined under Article F, and limited in occupancy by one person per designated bedroom unless otherwise specified within the special use permit.*

Staff supports a favorable recommendation to City Council.

Chairman Burden asked if there were any questions for staff regarding either of these agenda items. Hearing none, he said we will first open up the public hearing regarding the R-3 Boardinghouse or Rooming House Language change and asked if there was anyone present who wished to speak in favor of the amendment. Hearing none, he asked if there was anyone who wished to speak in opposition to the proposed amendment. Hearing none, he closed the public hearing and asked if Planning Commission had any comments or a motion.

Mr. Baugh moved to approve as recommended by city staff.



Mr. Jones seconded the motion.

Chairman Burden said there is a motion and a second to approve as recommended by staff, is there any discussion. Hearing none, he called for a voice vote.

All voted in favor of the motion to approve (7-0).

Chairman Burden opened the public hearing for the Boardinghouse or Rooming House M-1 Special Use Permit Addition and asked if there was anyone present who wished to speak in favor of the amendment. Hearing none, he asked if there was anyone who wished to speak in opposition to the proposed amendment. Hearing none, he closed the public hearing and asked if Planning Commission had any comments or a motion.

Mr. Finks moved to approve as recommended by staff.

Mr. Snell seconded the motion.

Chairman Burden said there is a motion and a second to approve as recommended by staff, is there any discussion. Hearing none, he called for a voice vote.

All voted in favor of the motion to approve (7-0).

Chairman Burden said these two items will move forward to City Council on May 12<sup>th</sup>, with a favorable recommendation.

### **Unfinished Business**

#### ***Special Use Permit – 521 Blue Ridge Drive – Major Family Day Home***

Chairman Burden asked staff for comments.

Mr. Fletcher said soon after the March 11, 2009 regular Planning Commission meeting, where the Commission voted unanimously to table the request from Aneta and Christopher Smialek to allow a “major family day home” at 521 Blue Ridge Drive, staff met with the applicant to further understand the details of what improvements could be necessary based upon the requirements of the Building Code. Staff also has obtained further information about the utilization of the intersection, information about accidents near this intersection, and looked into other realistic opportunities that could potentially enhance the traffic movement on, off, and near the property. The staff report from last month is attached for reference to the material that was presented during our previous meeting.

The Building Code states that “family day homes” shall be enforced within the scope of the *International Residential Code*. As a result, if the special use permit is approved, the Building Code does not require the applicant to make additional improvements to her dwelling.

Staff received an accident statistics response from the Police Department that outlined the number of accidents that have occurred near this property since July 2005. The researched information contained vehicle on vehicle collisions and hit and run reports; no pedestrian, structure, or bus accidents were reported. Specifically, there were 22 vehicle accidents at the Country Club Road/Blue Ridge Drive intersection and 13 collisions at the Country Club Road/Clay Street intersection.

A couple of concerns were discussed last month regarding signage near this intersection including “no parking” signs and “watch for children” signs. At this time, the Public Works Department does not believe that “no parking” signs are necessary within this stretch of Blue Ridge Drive. “Watch

for children” signs are not to be installed on collector or arterial streets, or on any street with a speed limit that is greater than 25 mph; therefore, a sign of this type will not be installed along Country Club Road. The Public Works Department, at this point in time, does not recommend installing “watch for children” signs along Blue Ridge Drive; the general concern being that once the sign is installed, it indirectly invites children to play in or near the street. If citizens of the neighborhood feel strongly about mounting these signs, the City has an application process that allows residents to petition the City to install the signage. This requires a written request from the residents of a subdivision, or on a subdivision street, indicating the number of signs and their proposed locations. The petition must have at least 51% of the residences in the subdivision, or from the subdivision street, stating that they support the installation of the signs. Each sign requires a \$150 donation to the City, from the residents of the subdivision, to cover the cost of the sign materials and the installation. Ultimately, the City will validate the locations of the signs.

As stated last month, there is little that can be done to improve the situation of vehicle maneuverability, on and off of the site, or from by-passing traffic. The City does not install traffic signals for private residences, and the current signals’ timing sequences cannot be changed to improve the situation. The angle of the traffic signal heads could be adjusted; however, staff does not recommend altering the angle due to safety concerns. After meeting on site, staff does believe that changing the traffic signal heads’ “tunnel visors” to “cut-away visors” could alleviate some of the difficulty of viewing the traffic signal indicators. Staff also suggests closing the existing driveway along Blue Ridge Drive and relocating it to the northern most point of the property. This would require extending the driveway across the entire width of the property and removing the hedgerow along Blue Ridge Drive. Although this would not resolve all of the complexities of this location, it would at least shift traffic movements further from the center of the intersection.

The coming and going traffic created by the “major family day home” would compound the issue of our existing concern with traffic patterns and safety at this intersection. Staff maintains that approving this request is not in the best interest of the City and recommends denial of the application. If approved, staff continues to offer the suggested conditions that were discussed last month, with amendments made to number 2, and recommends one additional condition (number 6 below).

1. The “major family day home” shall be valid only for the current applicants.
2. Vehicles shall not be permitted to exit the property onto Country Club Road. All vehicles shall exit onto Blue Ridge Drive. The applicant shall install signage on her property to this effect.
3. All existing shrubbery/plantings within the island created by the connecting portions of the driveway, near the southwestern property corner, shall be trimmed or removed to improve sight distance. All plantings within this area shall be low-lying and/or ground covering vegetation.
4. The connecting portions of the driveway shall remain open at all times to allow parents/guardians to maneuver on and off of the property without utilizing the public right-of-way. Therefore, parking is prohibited on these portions of the driveway.
5. If City Council finds traffic conditions warrant re-evaluation of the “major family day home,” they may require the applicant to return to Planning Commission to re-examine the use of the property. It shall be at the discretion of Planning Commission and/or City

Council to determine if the re-evaluation shall necessitate a public hearing. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.

6. The applicant shall close the existing entrance on Blue Ridge Drive and relocate it to the northernmost point of their property. The existing hedgerow shall be trimmed or removed to improve sight distance. All plantings within this area shall be low-lying and/or ground covering vegetation.

Chairman Burden asked if there were any questions for staff at this time. Hearing none, he said we will re-open the public hearing on this request from last month and asked the applicant to come forward and speak.

Aneta Smialek of 521 Blue Ridge Drive, said recently she started attending school to become a Day Care Director, so that in the future she could open a Day Care Center somewhere in the City. I have learned a lot about how day care facilities are really needed in the City and in the Valley. Access to preschool in Virginia is lowest for children living in poverty, as reported by a study conducted by UVA. When children enter kindergarten having basic skills in the area of math, science, history, social sciences, physical and motor development it gives them a much greater chance of better achievement in the future, than if they do not have any educational preschool. Most day care facilities in the area are full and by the time a position opens for them, they are entering school, with no educational background. There are a lot of babysitters who let the children sit in front of the TV; our intentions are to get children ready for kindergarten and beyond.

The issue with this request is actually the traffic and the driveways, which I do not think it is a really bad thing. From the previous hearing I do not understand where it would be best to have a day home. If we were to pick a quieter community, it would bother the neighbors. If we would go further into this neighborhood, it would tie-up traffic. If we are on a corner, it is yet another problem. My thinking is most businesses are on corners and there are no restrictions how many people can go in and out of these. As for moving the driveways at our residence, we do not have a problem with that; will it make a big difference, I do not know how. We did give each of our parents a letter that says they have three warnings and a ten dollar fee charged if they exit out onto Country Club Road. We do monitor with camera surveillance to make certain no one is exiting out. We are trying to do what we can and we are open for other things. However you prefer what we should do; we are willing to work with you on.

Mr. Snell asked how many children do you care for right now.

Ms. Smialek replied right now I have ten.

Mr. Snell said if this commission were to limit your business to ten how would you feel.

Ms. Smialek said this could limit our income considerably. Since we purchased the home a year and half ago, my husband has had a heart attack, I have had a baby, and my son had tonsil surgery. Medical bills are starting to pile up and currently we have a very structured budget; so reducing the number of children would be critical for us. We may actually lose the house.

Mr. Baugh said he was not asking you to reduce from where you are now; but to cap your total at ten instead of twelve.

Ms. Smialek responded that ten would be okay.

Mr. Jones said you saw the graphic indicating the number of accidents that have occurred there since July 2005, of those accidents at the intersection, have any involved your parents or were your parents the causative factor in any of the accidents.

Ms. Smialek said as far as we know since we moved in July 2007, there have been none of our parents involved. I believe it was in August that there was a big accident because both traffic lights turned green at the same time; but that is the only accident I have seen and none of our parents have been involved. We have seen accidents on Clay Street and Country Club Road. We lived in Miami before here, so we do understand what having lots of traffic is; compared to Miami, Harrisonburg's numbers are really low.

Mr. Baugh said at one point you were hoping to sell the property and move somewhere else, is that something you would still try to do.

Ms. Smialek said the one reason we were looking elsewhere is because we had so many phone calls and clients, people did want to come in. I rejected four clients last week, because I do not have space for their children. We want to open up a Day Care Center in the future. The problem we ran into was to find a spot large enough, the yard and rooms have to be big, most of the places we found did not have a large backyard or big enough rooms. We also needed to have enough money set aside for several months employee pay and so forth. We do want to prepare ourselves for the future.

Mr. Baugh said what you are saying is if you can find the right place, you would actually like to move the operation there.

Ms. Smialek said yes, as a Day Care Center.

Mr. Baugh asked if you found the right place, you would move your business and keep your house as your residence.

Ms. Smialek replied yes, we would like to open the Day Care Center business and just leave the residence alone.

Mr. Da'Mes said given staff's condition number six; the cost of moving the driveway would be incumbent upon the applicant.

Mr. Fletcher replied yes, that is correct.

Mr. Da'Mes asked if there was an estimate of what something like this would cost the applicant.

Mr. Fletcher said I cannot offer an estimate.

Mr. Da'Mes asked the applicant if they understood that the condition was to close off the existing driveway and install a new driveway further north and that cost would be on you to provide that.

Ms. Smialek responded yes. Would we need to get a permit for the concrete work and the work that is on City property?

Mr. Fletcher said you would need to obtain a public access permit; this lets us know that you are doing work on City right-of-way and there is no cost for the permit.

Mr. Da'Mes said are you okay with incurring those costs if we deem necessary.

Ms. Smialek said yes.

Chairman Burden asked if there were any further questions for Ms. Smialek. Hearing none, he asked if there was anyone else wishing to speak on behalf of the applicant.

Amy McNeil of 5878 Oak Shade Road, said she wanted to share something regarding school readiness. The infrastructure to support a comprehensive strategy to improve school readiness in Virginia has been recently established. Just to speak a little on this – I am a very young mother, I have a six year-old and a four year-old. When my six year-old went to Aneta, he was not able to read or write or other things, this was due to lack of parenting on my part, I did not read to my children like I should have back then. When he started pre-K he was still behind where he needed to be; the pre-K helped to get him up to speed to where he needed to be for kindergarten. Aneta really prepared him for this. As far as my four year-old, he was already advanced enough that he did not require pre-K; however someone dropped out and we took the pre-K slot. Before starting pre-K, my four year-old could spell his name. Aneta is not just a day care, she is, in a way, a pre-school; because she teaches the children about shapes, colors, counting, and so on. They do not just go there to play and watch TV, everyday they learn something. When I went to meet Aneta the first time I felt it was a good fit for my children. I am actually expecting my third child, and I would go to no one else for child care. She has a good relationship with parents, she is willing to work with you, and she keeps you informed about what is going on with your children.

As far as the traffic is concerned, I went in and out of there for about a year, and it is much better than when she was down further on Blue Ridge Drive. When she was down further you had to back in and out of the driveway and sometimes there might have been two-way traffic in the driveway. Now you have two separate entrances as to where you can come in one way and go out the other if necessary. I have never had a problem going in or out of the property and I have never seen any accidents.

Chairman Burden asked if there were any questions for Ms. McNeil. Hearing none, he asked if there was anyone else wishing to speak in favor of the applicant.

Candace Warlighter of 2540-D Mosby Court said she first wanted to comment on the car accident statistics; I have not seen or heard any car wrecks with any of the parents. I also wanted to comment that with the earlier request for Dr. Cobb, there seemed to be an issue with traffic coming in the neighborhood. Aneta is on the corner, and I do not know if this helps but we do not have to technically travel into a neighborhood. If you were to cut back the number of children she could keep, I do not think you would see any changes in the amount of traffic. I do not recall the exact numbers that were provided last time, but on Country Club Road east bound it was well over 4,000 vehicles; so if you reduce her in numbers, I do not think it will make any difference in the traffic numbers. I also do not feel that Aneta's day care is causing any concerns for, or with, the surrounding neighbors what-so-ever.

Chairman Burden asked if there were any questions for Ms. Warlighter. Hearing none, he asked if there was anyone else who wished to speak in favor of the request.

Michelle Bolla of 705 Northfield Court, said I just want to reiterate on a couple of points that you questioned with Aneta. She does have ten children that attend the day care now; but many of those are duplicates. There are not ten cars coming to the day care every morning and evening, I have two children myself and that is one vehicle. To me this day care is not about her financial situation or the traffic, it is about these children. If you could see what all these children do every day, you would know this is more than just a babysitter. I have an autistic five year old that has been going

to Aneta since she was very young and I feel because of Aneta, my daughter will not have to repeat kindergarten. I firmly believe if she would have been in any other day care she would not have the same training that she has. I know that we keep saying these things about Aneta; but you all are just looking at statistics and traffic, this day care is so much more than that. We do the best we can to enter and exit the day care safely. Aneta gave each of us a letter stating you cannot exit out onto Country Club Road, you may enter from there only and use Blue Ridge Drive to exit with the traffic signal. We as parents have decided that if you need us to turn right out onto Blue Ridge Drive and then circle the block, we will do so; we do not care, we need this daycare. The idea of moving the driveway over twenty feet does not seem to help either; it puts us right in back of the stop bar and that is not very safe either.

Chairman Burden asked if there were any questions for Ms. Bolla. Hearing none, he asked if there was anyone else wishing to speak in favor of the applicant.

Aneta Smialek said if I did not get the special use permit and my day care was reduced to five children; for income purposes I would not be able to survive. I would have to somehow attempt to run two shifts. Right now I work from 5:30 a.m. to 5:30 – 6:00 p.m. If I would have to open from 5:30 a.m. to 2:00 p.m. and then from 3:00 p.m. to 11:00 p.m., and there are people who need second shift day care, I would have more traffic in the afternoons when there are five cars coming in picking-up children and five cars dropping-off children. This would create more traffic than I currently have, and it would be without a special use permit; it is not required. I do not really want to work that type of hours. I work twelve to thirteen hours a day now and it is exhausting for me. I would not want to go from 5:00 a.m. to 12:00 a.m., I use to do it and it is so exhausting. I have a baby and I really want to spend time with my family. My husband is a truck driver and he is home two or three times a week and we really want to have dinner together, not be operating a day care.

Chairman Burden asked if there were any further questions for Ms. Smialek. Hearing none, he asked if there was anyone else wishing to speak in favor of the applicant. Hearing none, he asked if there was anyone wishing to speak opposed to the special use permit request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Snell asked why did we not put a time limitation on this for the hours of operation.

Mr. Fletcher said it never came up in discussion.

Mr. Snell said the question came up earlier about how much it would cost to move the driveway entrance. I did some calculation and with that corner you will have to have some type of traffic control; therefore it would be in the neighborhood of about \$5,000. The other issue is the drawing shows that entrance right up to the property line; but actually there is a utility pole and guy wires in that area.

Mr. Fletcher said that drawing was just my approximation of moving the driveway.

Mr. Snell said if you take into account the guy wire coming onto the property and slide the entrance down ten feet or so; what is the real distance of the entrance move.

Mr. Fletcher said from looking at the survey it indicates the frontage along Blue Ridge Drive as 86 feet total and you can see where ten feet is for the guy wire. If you were to go ten feet off the property line you are looking at the entrance being 50 feet from the intersection.

Mr. Da'Mes said last month we discussed the traffic flow onto and off the property and I guess this was staff's attempt at alleviating concerns by increasing the amount of space between the intersection and entrance. Vehicles coming down Blue Ridge Drive currently stop at the stop bar and can see parents trying to exit the property; whereas if you were to move this entrance to the property line then the entrance is back from the stop bar. I can even see a situation where parents try to merge onto the street and you have the vehicle in the middle of the road not fully merged into the lane.

Mr. Fletcher replied that Public Works said it is a better scenario to be behind the stop bar.

Mr. Da'Mes said well I am not going to argue with their decision.

Mr. Baugh said you are either going to have low traffic and the cars would not be backed up to the entrance and the parents could pull into the lane. Or if traffic is backed up you would still be in front of someone and they could let you merge in.

Mr. Finks said that the photo we are looking at tonight is not accurate

Mr. Fletcher responded that the photo is a 2006 aerial and is not current.

Mr. Finks said currently the stop bar is a little further back (north) on Blue Ridge Drive and it covers two lanes of traffic traveling south.

Mr. Da'Mes said the reason he is bringing this up is because is it a detriment to have two accesses; what if we were to close off the Country Club Road access, would that alleviate the safety questions.

Mr. Fletcher responded I do not know. I think that ultimately staff decided there is not much you can do to fix the existing situation. This is just a suggestive condition to get the entrance out of the intersection.

Mr. Da'Mes said the reality is the 10 or 70 vehicle trips coming from here onto a street that supports approximately 10,000 cars is not significant. Should we obligate them to have to pay \$5,000 to move an entrance?

Mr. Jones responded that he felt it was not necessary, there are other things that you can do. Does the situation warrant this change? According to the stats from the HPD, we have four crashes in one year and five in another, all within a twelve month time frame. They appear to be happening sometime between noon and 4:30 p.m. According to Ms. Smialek, none of the vehicles accessing her property are involved in these situations; so is it a problem? Or is it just a problem here?

Mr. Chenault said to me public safety trumps everything and there is no question that this is an outstanding day care; but I have to ask myself if we were starting at this fresh and there was no day care center at this corner, what would we do when they came in for a special use permit. I can only go back to the one precedent we had at the corner of Garbers Church Road and West Market Street, which was ultimately withdrawn, but I do not think we would approve this. In fact, I do not think we would approve it at a lot of intersections. We have this business here now and I still think it is an incredible public safety issue, not just for the people using the property, but for traffic that is traveling thru the area. The only way I could support this is if we put some type of time limit on this. That allows her to carry-over time to continue to care for the children that are there now so that there is no loss of service and it is an encouragement for her to pursue her business plan. If it gets to the end of the deadline and she is not able to achieve her day care facility, then she has to

come back. That is the only way I can see going about this. I know I am not in the majority on this but I'm still not thrilled about this, I am scared from a traffic standpoint and a zoning standpoint. But I would be willing to consider that scenario if the rest of the Commission were so inclined.

Mr. Finks asked am I correct in saying that Ms. Smialek can have five children there in a day care, by right, and there is nothing we can do about it.

Mr. Fletcher replied yes.

Mr. Finks said is that not a dangerous situation and we cannot do anything about it.

Mr. Chenault responded that he thinks VDSS has to approve the location no matter.

Ms. Smialek said no, you only have to have their approval for twelve, not for five.

Mr. Finks said then to be perfectly honest, the way I am looking at it, is that it is just a couple more cars. I find it hard to say no. But the State tells us that without any question you can have five children there in a day care situation.

Mr. Chenault questioned whether we were absolutely certain about this. An establishment could just pop-up along Route 11 somewhere and you put five children in it.

Mr. Fletcher said yes. Only when you go above the five limit are you required to obtain the special permission from VDSS.

Mr. Jones said he agrees with Mr. Chenault that public safety should trump everything. I also believe in statistics and these statistics just do not bear out that concern. I do not want this here anymore than anybody else does, it is not an ideal location for it; but it is what it is at this moment. The State allows five and I agree with Mr. Finks that a couple more vehicle trips in and out of there is not going to create anymore of a burden than already exists. I would rather it was configured differently. In today's paper there were only two locations advertising to accept children in a day care facility. The applicant has already expressed her financial situation, and to have her incur an expense of \$5,000 is an undue burden. I think she is providing a worthwhile service to the community in a situation where there is a lot of folks that do not want to take the children she is taking. I am in favor of this.

Mr. Da'Mes said he definitely likes the idea of limiting our time frame, because it is an uncomfortable situation. We do have control of the safety of it to an extent, because we can put conditions on it. I would still like to open up the discussion of would closing the Country Club Road entrance create a safer situation for everybody.

Mr. Finks said he could comment on that because he lives in the area. It is actually a bit more dangerous to come out onto Blue Ridge Drive, because you only have a ten-foot lane to turn right into.

Mr. Jones said if we were to close the access point on Country Club Road I think you would be creating a problem with vehicles trying to enter and exit at the same location along Blue Ridge Drive.

Mr. Chenault asked the applicant when she is scheduled to receive her certification to operate a day care facility.

Ms. Smialek replied April, 2010.



Mr. De'Mas said the concept of twelve children in an R-1 residential area was really a sticking point for me and it has taken awhile to overcome that. I realize this street has a Sheetz and a Chamber of Commerce at one end and a bank and multiple commercial establishments at the other end. It really is a corridor and given that the day care is along the main route rather than up into the neighborhood I am comfortable with. But I am still undecided.

Mr. Snell said I think staff has done the work for us as far as the conditions if this were to be approved. In this case of putting a time limit on the request makes it unjustifiable for the applicant to have to incur the expense of moving the driveway.

Chairman Burden said is the intent behind the time limit to encourage the applicant to get the certification to allow her to open a day care facility.

Mr. Chenault said it encourages her to get it done and then gets the use off of the property; which helps with public safety.

Mr. Snell said if you do the math with the statistics provided by staff, in the Blue Ridge Drive and Country Club Road intersection there were twelve accidents in the eighteen months prior to her occupying the house. There have only been eight accidents since her occupying the property. I agree that this is not a good scenario for traffic patterns, but I do not think the evidence is there that we are creating something worse.

Mr. Baugh said what I am wondering about is do you want both conditions; a two year time limit and condition five which at some point may require the applicant to return to Planning Commission for re-examination. If you have number five do you need to have the separate condition that states it is coming back within a fixed amount of time?

Mr. Snell moved to give a favorable recommendation to City Council to approve this request as presented by staff with the exception of eliminating condition number six and enforcing only conditions one thru five.

Mr. Jones asked do you not want to put a time limit on it.

Mr. Snell said condition number five covers it. At any time Commission or Council could call it back up for consideration with or without a public hearing. I completely support Mr. Chenault's point for a time limit, I just do not think we need to reiterate in with a time limit.

Chairman Burden said the motion is to approve with the exception of condition number six, is there a second.

Mr. Jones seconded the motion.

Chairman Burden said is there any further discussion before we take a vote.

Mr. Chenault said I am leaning to supporting, but I am still having a hard time. If our Public Works staff is telling us that the northern most entrance is a better location, whether it is \$5,000 or not, I have a hard time going against their professional opinion on something that they have a lot of experience and time in doing.

Mr. Finks said it would be too tight of a turn. At least where it is located now you have a straight shot at coming out.

Ms. Bolla spoke from the audience to say where the entrance is located now you are able to see if cars are coming around the corner. Moving the entrance may make it worse or not allow you to see the turning traffic until it is too late. I know I check multiple times before pulling out of there.

Mr. De'Mas said I would like to relook at condition number three, I know it discusses the shrubbery in the island, but there is also a large hedge along the front of the house next to Blue Ridge Drive. Why not reduce that hedge to below car level. Right now it still limits your visibility.

Mr. Snell asked what it would help you to see.

Mr. Da'Mes replied you would see the cars coming down Blue Ridge Drive to the right. The hedge just causes another barrier.

Mr. Jones said it would help with visibility if it were shortened up.

Mr. Da'Mes said we need to stipulate in here that the City is going to change the traffic signal visors to open visors.

Mr. Fletcher said my feeling from the Public Works staff is that they are going to go out and do so, but I have not had verification on that.

Mr. Da'Mes said unless there is a time limit of eighteen months or so I am just not really in support of this. I would really like to look at this again and what its impact has been in two years.

Chairman Burden asked for a roll call vote of the motion to recommend approval with the exception of condition number six.

Commissioner Chenault – no.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner De'Mas – no.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said the motion passes (5-2) for a favorable recommendation to City Council on May 12<sup>th</sup>.

### **Public Input**

None.

### **Report of secretary and committees**

Mrs. Banks said the zoning inspectors visited the northeast sector of the City this month and, sorry to say, found 63 violations; this is almost 20 more than three years previous. Violations consisted of inoperable vehicles and discarded materials. Next month you can look for the inspectors in the Industrial and Technology Park area of the City.

Mr. Jones said he attended the Rockingham County Planning Commission last night which lasted eleven minutes.

Mr. Baugh said he noticed that in the City Council packet for next week he saw an alley closing that City Council is recommending to come to Planning Commission.

Mr. Fletcher said yes that is correct.

**Other Matters**

Mr. Fletcher said just a reminder of the joint meeting with City Council on the Comprehensive Plan next Wednesday, April 15<sup>th</sup>.

**Adjournment**

The meeting was adjourned at 10:40 p.m.

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Chairman Jared Burden

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Secretary, Alison Banks